

### **REMARKS**

The Office Action of September 1, 2009 has been reviewed and these remarks are responsive thereto. Claims 7-17 have been amended and new claim 21 has been added. No new matter has been added. Upon entry of this Amendment, claims 1-17 and 19-21 will be pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

#### ***Rejections Under 35 U.S.C. § 101***

Claims 7-12 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Without acquiescing to these rejections, Applicants have amended claims 7-12 to place the claims in a more preferred form. Accordingly, Applicants respectfully request withdrawal of these rejections.

#### ***Rejections Under 35 U.S.C. § 112***

Claims 7-12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 7 has been amended to recite “wherein the predetermined number of times is greater than 1.” Accordingly, Applicants respectfully request withdrawal of these rejections.

#### ***Rejections Under 35 U.S.C. § 103***

Claims 1, 7, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0104081 to Candelore et al. (hereinafter “Candelore”) in view of U.S. Patent No. 5,801,747 to Bedard (hereinafter “Bedard”). Applicants respectfully traverse this rejection.

Claim 1 recites, among other features, adding a first category from the first set to the second set of categories of broadcasted programs in response to tuning a broadcasted program viewing device to a broadcasted program fitting into the first category of the first set of categories *a predetermined number of times*, wherein the predetermined number of times is

greater than 1. Applicants respectfully assert that neither Candelore nor Bedard, alone or in combination, teaches or suggests the features of claim 1.

Candelore describes a method and system for maintaining *relative* statistics for creating a list of favorites. *See* title. As admitted in the Office Action at p. 5, Candelore describes maintaining a “list of favorites based on relative statistics...wherein the relative statistics tracks the number of times a channel, program, actor, director or theme was accessed.” *See also* Candelore paras. [0045], [0046]. Maintaining a list of favorites based on *relative* statistics clearly does not constitute adding a first category from the first set to the second set of categories of broadcasted programs in response to tuning a broadcasted program viewing device to a broadcasted program fitting into the first category of the first set of categories *a predetermined number of times*. At most, Candelore describes adding a category to the list of favorites based on the amount of time or number of times it was viewed *relative* to other programs. *Id.* No predetermined threshold is described in Candelore. The addition of Bedard fails to cure the deficiencies of Candelore with respect to claim 1.

Bedard describes a method and apparatus for monitoring television viewing activity to determine preferred categories of programming and preferred channels of a viewer. Abstract. The method and apparatus of Bedard include adding a viewed channel to a list of preferred channels when the *channel* is viewed for a predetermined *amount of time*. *See* col. 4, lines 38-40 (emphasis added). At most, Bedard describes adding a category to a viewer profile based on viewing *a channel* associated with that category. *See* col. 4, lines 49-65 (emphasis added). However, Bedard clearly fails to teach or suggest adding a first *category* from the first set of categories to the second set of *categories* in response to tuning a device to a *broadcasted program* fitting into the first category a predetermined number of times. Rather, Bedard describes adding a category to a viewer profile based on a number of times a channel associated with that category has been viewed. According to Bedard, a category will be added only if the channel viewed is associated with that category. *Id.* The category will not be added to a viewer profile if a *broadcast program* in that category is viewed on a channel not associated with that category. *Id.* There is no teaching or suggestion in Bedard of adding a *category* to a set of *categories* based in response to tuning a device to a *program* fitting into the first category.

Further, Bedard fails to teach or suggest adding a category *in response to tuning a device to a broadcasted program fitting into the first category a predetermined number of times*, wherein the predetermined number of times is greater than 1, as recited in claim 1. Instead, Bedard describes adding a channel to the list of channels when the channel is viewed once *for a given period of time*. See col. 5, lines 34-48. A length of viewing time, as described by Bedard, does not constitute a number of times tuned. Further, Bedard describes a system wherein a device may be tuned to a channel more than once but not added to the channel listing because the channel was not viewed for the minimum time required.

For at least the reasons discussed above, Applicants respectfully assert that claim 1, as well as claim 19 that depends therefrom, are patentably distinct from the cited combination of references.

Claim 7 includes language similar to claim 1 and is allowable for at least the same reasons discussed above with respect to claim 1. Accordingly, Applicants respectfully request withdrawal of this rejection.

Claims 2 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore in view of Bedard and further in view of U.S. Patent No. 5,978,043 to Blonstein et al. (hereinafter “Blonstein”). Applicants respectfully traverse these rejections.

Claims 2 and 8 depend from claims 1 and 7, respectively, and are allowable for at least the same reasons as their base claims and further in view of the additional novel and non-obvious features recited therein. The addition of Blonstein fails to cure the deficiencies of Candelore and Bedard with respect to claims 1 and 7. Further, claims 2 and 8 recite, among other features, removing a second *category* from the second set upon a selecting of the second *category* from the second set. None of the cited references, alone or in combination, teaches or suggests the features of claims 2 and 8. At most, Blonstein describes removing a *channel* from a favorites list. See col. 12, lines 23-30. However, there is no teaching or suggestion of removing a *category* as recited in claims 2 and 8. Thus, Applicants submit that claims 2 and 8 are allowable for at least this additional reason.

Claims 3-5 and 9-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore in view of Bedard and further in view of U.S. Patent No. 5,635,989 to Rothmuller (hereinafter “Rothmuller”). Applicants respectfully traverse these rejections.

Claims 3-5 and 9-11 depend from claims 1 and 7, respectively, and are allowable for at least the same reasons as their base claims and further in view of the additional novel and non-obvious features recited therein. The addition of Rothmuller fails to cure the deficiencies of Candelore and Bedard with respect to claims 1 and 7.

Further, claims 3 and 9 recite, among other features, removing a second *category* from the second set upon a broadcasted program viewing device not being tuned, for a period of time at least equal to a first predetermined threshold, to at least one broadcasted program predetermined to be in the second category from the second set. None of the cited references, alone or in combination, teaches or suggests the features of claims 3 and 9. At most Rothmuller describes removing a program *title* from a favorite program list based upon expiration of a predefined time period. There is absolutely no teaching or suggestion of removing any category, let alone a *category* from a set of categories upon a broadcast viewing device *not being tuned* for a period of time at least equal to a first predetermined threshold, to at least one broadcasted *program* predetermined to be in the second category from the second set. In fact, Rothmuller fails to teach or suggest removing any item based on a viewing device not being tuned to a program, as recited in claims 3 and 9. Thus, Applicants submit that claims 3 and 9 are allowable for at least this additional reason.

Claims 6 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore in view of Bedard and further in view of U.S. Patent Publication No. 2005/0204382 to Ellis et al. (hereinafter “Ellis”) and U.S. Patent No. 6,323,911 to Schein et al. (hereinafter “Schein”). Applicants respectfully traverse these rejections.

Claims 6 and claim 12 depend from claims 1 and 7, respectively, and are allowable for at least the same reasons as their respective base claims and further in view of the additional novel and non-obvious features recited therein. The addition of Ellis and Schein fail to cure the

deficiencies of Candelore and Bedard with respect to claims 1 and 7. Accordingly, Applicants respectfully request withdrawal of these rejections.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore in view of Ellis and Schein. Applicants respectfully traverse this rejection.

Claim 13 recites, among other features, a first unit providing a first set of categories of content of broadcasted programs and a second unit coupled with the first unit and configured to add a category from the first set to a second set of categories of broadcasted programs *in response to selecting the category* from the first set and *tuning a broadcasted program viewing device*, for a period of time at least equal to a first predetermined threshold, *to at least one broadcasted program predetermined to be in the category* from the first set, wherein the second unit further includes a user verification wherein a user approves the category from the first set being added to the second set prior to the category being added. Applicants respectfully assert that none of Candelore, Ellis or Schein, alone or in combination, teaches or suggests the features of claim 13.

Similar to the discussion above, Candelore fails to teach or suggest adding a category from the first set to a second set of categories of broadcasted programs *in response to selecting the category* from the first set and *tuning a broadcasted program viewing device*, for a period of time at least equal to a first predetermined threshold, *to at least one broadcasted program predetermined to be in the category* from the first set, as recited in claim 13. At most, Candelore describes adding a program to a favorites list based on *relative* viewing statistics. *See* paras. [0045], [0046]. There is absolutely no teaching or suggestion in Candelore of adding a category to a second set and tuning a broadcasted program viewing device for a period at least equal to a first predetermined threshold. As discussed above, adding a program to a favorites list based on relative statistics does not constitute tuning a broadcast program viewing device for a period at least equal to a first predetermined threshold. The addition of Ellis and Schein fails to cure the deficiencies of Candelore with respect to claim 13. Accordingly, Applicants respectfully submit that claim 13 is allowable over the cited combination of references.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore in view of Ellis and Schein and further in view of Blonstein. Applicants respectfully traverse this rejection.

Claim 14 depends from claim 13 and is allowable for at least the same reasons as its base claim and further in view of the additional novel and non-obvious features recited therein. The addition of Blonstein fails to cure the deficiencies of Candelore, Ellis and Schein with respect to claim 13. Further, claim 14 recites, among other features, wherein the second unit is also configured to remove a category from the second set upon a selecting of the category from the second set. As discussed above, at most, Blonstein describes removing a *channel* from a favorites list. *See* col. 12, lines 23-30. However, there is no teaching or suggestion of removing a *category* as recited in claim 14. Thus, Applicants submit that claim 14 is allowable for at least this additional reason.

Claims 15-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore in view of Ellis and Schein and further in view of Rothmuller. Claims 15-17 depend from claim 13 and are allowable for at least the same reasons as their base claims and further in view of the additional novel and non-obvious features recited therein. Accordingly, Applicants respectfully request withdrawal of these rejections.

#### ***New Claim***

New claim 21 has been added. Support for this new claim can be found throughout the originally filed specification, claims and figures. No new matter has been added. Claim 21 depends from claim 1 and is allowable for at least the same reasons as its base claim, and further in view of the additional novel and non-obvious features recited therein.

### **CONCLUSION**

No additional fees are believed to be due in connection with this amendment. If any additional fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

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